93-887

No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ROYAL THAI GOVERNMENT,

Petitioner,

vs.

BELTON INDUSTRIES, INC.; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC.; SHUFORD MILLS, INC.; DELTA-WOODSIDE MILLS, INC.; WEST POINT-PEPPERELL, INC., BIBB MANUFACTURING COMPANY and JPS TEXTILES as successors in interest to J.P. STEVENS & CO., INC.; WEST POINT-PEPPERELL, INC.; THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC.; THE UNITED STATES OF AMERICA; and the GOVERNMENT OF COLOMBIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does an administrative agency act unlawfully by applying the rationale of *Torres v. Oakland Scavenger Company*, 487 U.S. 312 (1988), in proceedings before it?

PARTIES TO THE PROCEEDING

The parties to the appeal in the court below were those named in the caption of this Petition. The United States and the Government of Colombia are named as respondents herein pursuant to Supreme Court Rule 12.4. All parties to this proceeding, along with the Government of Sri Lanka and the Government of Peru, were also parties to a companion appeal in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Royal Thai Government respectfully prays that a writ of certiorari issue to review a judgment and opinion of the United States Court of Appeals for the Federal Circuit entered in this case on September 7, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Federal Circuit appears in the Appendix hereto at 1-a and is reported at 6 F.3d 756 (Fed. Cir. 1993). An order by the Federal Circuit denying rehearing in a companion case appears in the Appendix at 37-a and is unreported.

The opinion of the United States Court of International Trade appears in the Appendix at 15-a and is not reported. The judgment of the Court of International Trade appears in the Appendix at 29-a and is reported at 1992 WL 101053 (Ct. Int'l Trade May 7, 1992).

The decision of the United States Department of Commerce which was reviewed by the courts below appears in the Appendix at 31-a and is published at 55 Fed. Reg. 48,885 (Dep't Comm. 1990).

JURISDICTIONAL STATEMENT

The opinion and judgment of the Federal Circuit were entered on September 7, 1993. This Petition is being filed within 90 days of that date.[1]

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

The principal regulation involved in this case is 19 C.F.R. § 355.25(d)(4), which was promulgated by the United States Department of Commerce pursuant to section 751 of the Tariff Act of 1930, 19 U.S.C. § 1675. The relevant text of this regulation is set forth in the Appendix at 40-a.

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[1] A timely petition for rehearing was denied in a companion case on October 4, 1993.

STATEMENT OF THE CASE

The administrative proceeding out of which this case arose was initiated in 1984 when the American Textile Manufacturers Institute ("ATMI"), a trade association with approximately 150 members, filed a petition requesting the United States Department of Commerce to conduct a countervailing duty investigation of certain textile and apparel products imported from Thailand. Pursuant to sections 302 and 701 through 709 of the Tariff Act of 1930, 19 U.S.C. §§ 1303 and 1671 through 1671h, the Commerce Department is empowered to conduct such investigations to determine whether a foreign government, person, or entity is providing certain subsidies with respect to the manufacture, production, or exportation of merchandise that is imported, or sold for importation, into the United States. If the Commerce Department determines from its investigation that such a subsidy is being provided, it is empowered to offset the subsidy by imposing upon the relevant merchandise a countervailing duty equal to the amount of the net subsidy provided by the foreign government, person, or entity. *See* 19 U.S.C. § 1671.[2]

After ATMI requested initiation of the investigation in this case, the Royal Thai Government, petitioner herein, objected on the grounds that ATMI lacked standing because it was not an "interested party" within the meaning of 19 U.S.C. § 1677(9). Rather than submitting information sufficient to establish its status as an "interested party," ATMI sought permission to amend its petition to add eight of its individual member companies as petitioners.

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[2] Countervailing duty investigations involving products from Thailand fall within section 303 of the Tariff Act of 1930, 19 U.S.C. § 1303, and thus often require no proof of injury to a domestic industry, as would otherwise be required under section 701(a)(2) of the statute, 19 U.S.C. § 1671(a)(2).

The Commerce Department found that ATMI lacked standing, but nevertheless allowed the eight individual member companies to pursue the petition because each was an "interested party." *See* Certain Textile Mill Products and Apparel From Thailand, 49 Fed. Reg. 49,661, 49,661 (Dep't Comm. 1984) (prelim. determination) (citing Certain Textile Mill Products and Apparel From Indonesia, 49 Fed. Reg. 49,672, 49,673 (Dep't Comm. 1984)). Then, on March 12, 1985, in accordance with section 704 of the Tariff Act of 1930, 19 U.S.C. § 1671c, and the Commerce Department's regulations promulgated thereunder, 19 C.F.R. § 355.18, the Commerce Department suspended the investigation pursuant to an agreement between the United States Government and the Royal Thai Government. *See* Certain Textile Mill Products From Thailand, 50 Fed. Reg. 9,832 (Dep't Comm. 1985). This intergovernmental agreement obligated the Royal Thai Government and its exporters to renounce certain subsidies on relevant merchandise exported to the United States, to file quarterly compliance reports and certifications with the Commerce Department, and to subject themselves to the possibility of annual administrative reviews of the agreement by the Commerce Department. Because this agreement was reached, the Commerce Department took no further action in the matter and issued no countervailing duty order.

On February 26, 1990, in accordance with a "sunset" provision in its regulations, 19 C.F.R. § 355.25(d),[3] the Commerce Department published in the Federal Register a notice of its intention to terminate the investigation unless an "interested party" objected to the termination or requested an administrative review of the suspended investigation by March 31, 1990.

[3] Under this sunset provision, the Commerce Department will terminate any suspended investigation if no interested party has requested an administrative review of the investigation for five years or objects to the termination by the last day of the fifth consecutive anniversary month after the suspension agreement went into effect. 19 C.F.R. § 355.25(d)(4).

Certain Textile Mill Products and Apparel From Colombia and Certain Textile Mill Products From Thailand, 55 Fed. Reg. 6,669 (Dep't Comm. 1990). Termination of the investigation would result in termination of the suspension agreement, thus relieving the Royal Thai Government of the burden and expense of complying with the agreement after five years of compliance. None of the eight individual companies previously recognized as interested parties filed any objection or requested review within the time prescribed. However, on March 30, 1990, more than five years after the suspension agreement went into effect and only a day before expiration of the deadline, counsel for ATMI (who also had represented the eight individual member companies prior to the suspension agreement) sent a letter to the Commerce Department, purportedly "[o]n behalf of [ATMI] and its member companies," stating that "ATMI objects to the revocation of the countervailing duty order on certain textile mill products and apparel from Thailand." No individual "member companies" of ATMI were identified in counsel's eleventh-hour letter.

On April 19, 1990, the Royal Thai Government opposed ATMI's letter-objection on the grounds that ATMI had previously been held to lack standing as an "interested party" to the proceeding. The Commerce Department thereafter requested ATMI to provide information sufficient to establish its status as an interested party with standing to object to termination of the suspended investigation, warning that if ATMI failed to do so, the investigation would be terminated. Again, ATMI failed to provide such information, and instead took the position that in filing its objection on March 30, 1992, ATMI was "acting on behalf of" twenty-six of its individual member companies, which were identified for the first time in an attachment to a letter from ATMI's counsel dated June 14, 1990, ten weeks beyond the deadline established pursuant to the Commerce Department's sunset regulation.[4]

[4] As it turned out, some of the member companies belatedly identified as those on whose behalf ATMI purportedly objected were among the eight

On November 23, 1990, the Commerce Department terminated the investigation in part, confirming its prior determination that ATMI lacked standing and ruling that ATMI's subsequent effort to substitute certain of its member companies was untimely under the sunset regulation. *See* Certain Textile Mill Products From Thailand, 55 Fed. Reg. 48,885, 48,886 (Dep't Comm. 1990) [Appendix at 34-a to 36-a].[5] In its decision, the Commerce Department emphasized that ATMI had failed to provide any of the requested information demonstrating its standing, and that, despite knowing it lacked standing in its own right, ATMI had not "specifically identified" any other party with standing until two and one-half months after the deadline established pursuant to the sunset regulation. *Id.*

ATMI and several of its member companies (respondents herein) thereafter sought judicial review in the United States Court of International Trade ("CIT") pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), and the case was consolidated with another case involving other products and many of the same parties. The Royal Thai Government sought and was granted leave to intervene as a defendant in the action in the CIT. On March 24, 1992, upon the plaintiffs' motion for summary judgment (which the court treated as a motion for decision on the agency record pursuant to CIT Rule 56.1), the CIT held, *inter alia*, that ATMI's March 30, 1990 letter objecting to termination constituted "adequate objections on behalf of the eight interested petitioners." *Belton Indus. v. United States*, No. 90-09-00474, slip op. no. 92-39, at 13-16 (Ct. Int'l Trade

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that had participated in the proceeding five years earlier, prior to the suspension agreement. That coincidence was first made known to Commerce and the Royal Thai Government in the attachment to counsel's June 14, 1990 letter.

[5] The termination was only partial because the Commerce Department determined that another "interested party" had timely objected to termination and requested a review with respect to certain textile products not relevant to this case.

Mar. 24, 1992) [Appendix at 25-a to 27-a].[6] Accordingly, the CIT concluded that the Commerce Department acted unlawfully and ordered the case remanded to the Department with instructions to rescind its termination of the investigation. *See id.* at 17 [Appendix at 27-a]. On May 7, 1992, the CIT entered a judgment vacating the order accompanying its March 24, 1992 opinion and directing the Commerce Department to rescind its termination of the suspended investigation and to reinstate the suspension agreement that had been the subject of the termination. *See* Appendix at 29-a to 30-a.

On appeal by the Royal Thai Government, the court of appeals affirmed the decision of the CIT in relevant part. Specifically, the court of appeals agreed with the lower court's conclusion that ATMI's letter-objection dated March 30, 1990 was sufficient to constitute a timely objection on behalf of certain member companies that ATMI later identified as also objecting to the termination, and thus held that the Commerce Department's decision was "unlawful." *Belton Indus. v. United States*, 6 F.3d 756, 761 (Fed. Cir. 1993) [Appendix at 11-a to 12-a]. The court of appeals subsequently denied a timely request for rehearing in a companion case. *See* Appendix at 37-a.

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[6] The CIT also held that the Commerce Department had failed to give proper notice to all interested parties of its intent to terminate the suspended investigation, *Belton Indus. v. United States*, No. 90-09-00474, slip op. no. 92-39, at 10-13 (Ct. Int'l Trade Mar. 24, 1992) [Appendix at 25-a], but that aspect of its decision was reversed on appeal, *Belton Indus. v. United States*, 6 F.3d 756, 761 (Fed. Cir. 1993) [Appendix at 10-a to 11-a].

REASONS FOR GRANTING THE WRIT

I.

THIS CASE PRESENTS AN IMPORTANT ISSUE OF ADMINISTRATIVE AND INTERNATIONAL TRADE LAW THAT IS OF GREAT INTEREST TO FOREIGN SOVEREIGNS AND OTHER PARTIES THAT TRADE WITH THE UNITED STATES AND ENTER INTO CONTRACTS WITH THE UNITED STATES GOVERNMENT.

This case presents an issue of great importance to many foreign governments and their exporters who trade with the United States. At present, there are more than 100 countervailing duty orders and suspension agreements in effect, involving imports from 34 foreign countries and representing billions of dollars in international trade. The burden and expense of responding to these investigations, and complying with any orders and suspension agreements that may result, is enormous not only for the foreign governments and exporters, but also for the Commerce Department, domestic importers in the United States, and, ultimately, American consumers.

For those foreign sovereigns and exporters who are the subjects of countervailing duty orders, or who agree to enter into suspension agreements with the United States Government, confidence in the integrity of the Commerce Department's sunset regulation is vital to the administrative process and to reasonable contractual expectations. The sunset regulation is the only means by which the Commerce Department can eliminate the burden and expense associated with a countervailing duty order or suspension agreement when there is no demonstrated domestic interest in its continuation. Concomitantly, the sunset regulation is one of the few means by which foreign governments and exporters can expect to attain finality and repose if, after years of complying with a suspension agreement, the relevant domestic industry in the United States expresses no

interest in its continuation. Thus, for both the United States Government and the foreign governments and exporters with whom it contracts, there is a strong interest in ensuring that those who have *bona fide* objections to the operation of the sunset provision assert those objections in a clear and timely manner.

Yet for domestic parties with *bona fide* objections to the operation of the sunset regulation in particular cases, compliance with the regulation is not at all demanding or burdensome; the regulation results in revocation of an order, or in termination of a suspension agreement, only when no interested party expresses interest for a period of five years and, even then, only if no interested party is sufficiently concerned to submit a brief letter expressing its objection prior to a deadline announced by the Commerce Department. *See* 19 C.F.R. § 355.25(d)(4). Given the importance of the sunset regulation to the interests of administrative finality and contractual expectations, and given the relative ease with which an objecting party can halt its operation in a particular case, the Commerce Department acted well within its discretion by insisting on strict and timely compliance with the regulation's procedural requirements.

II.
THE DECISION BELOW IS IN CONFLICT WITH A PRIOR DECISION OF THIS COURT AND ITS PROGENY IN OTHER FEDERAL CIRCUITS.

In *Torres v. Oakland Scavenger Company*, 487 U.S. 312 (1988), this Court held that the use of vague phrases such as "et al." to denote additional appellants in a notice of appeal is insufficient to preserve the appellate rights of those parties who are not otherwise specifically identified. The petitioner in that case was one of 16 plaintiffs in the district court, but through a "clerical error" on the part of a legal secretary his name was inadvertently omitted from the notice of appeal, which listed all 15 other plaintiffs and included the phrase "et al." *Id.* at 313. Despite acknowledging the "harsh result" produced by its deci-

sion, this Court concluded that the phrase "et al." — even in that case, where there was only one losing party not named in the notice of appeal — "utterly fails" to provide the opposition or the court with sufficient notice of who is contesting the judgment. *Id.* at 317-18. Thus, this Court held that the court of appeals lacked jurisdiction over the unnamed appellant's appeal. *Id.*

In the years since *Torres*, the federal courts of appeals have strictly applied this Court's holding and dismissed numerous appeals for failure to identify specific appellants by name.[7] These courts have also extended the rationale of *Torres* beyond the phrase "et al." to similarly vague designations purporting to refer to appellants not otherwise specifically identified. For example, in *McLemore v. Landry*, 898 F.2d 996, 999-1000 (5th Cir.), *cert. denied*, 498 U.S. 966 (1990), the Fifth Circuit held that a notice of appeal filed by "River Villa, A Partnership, and the respective individual partners therein, defendants in the above-captioned action . . ." failed to perfect the appellate rights of any party other than the partnership entity. Similarly, in *In re Unioil*, 948 F.2d 678, 681-82 (10th Cir. 1991), the Tenth Circuit held that a notice of appeal identifying certain related parties as "Appellant Partnerships, Dalton Development Project No. 1 *et al.* and other partnerships" was insufficient to perfect

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[7] *See, e.g., OTR Drivers at Topeka Frito-Lay, Inc.'s Distribution Ctr. v. Frito-Lay, Inc.*, 988 F.2d 1059, 1061-62 (10th Cir. 1993); *Harold Washington Party v. Cook County, Ill. Democratic Party*, 984 F.2d 875, 877 n.2 (7th Cir.), *cert. denied*, 114 S. Ct. 86 (1993); *Adkins v. Safeway Stores, Inc.*, 968 F.2d 1317, 1319 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 968 (1993); *In re Manguno*, 961 F.2d 533, 536-37 (5th Cir. 1992); *In re Unioil*, 948 F.2d 678, 681-82 (10th Cir. 1991); *Michigan Carpenters Council Health & Welfare Fund v. C.J. Rogers, Inc.*, 933 F.2d 376, 379-80 (6th Cir.), *cert. denied*, 112 S. Ct. 585 (1991); *Pontarelli v. Stone*, 930 F.2d 104, 108-09 (1st Cir. 1991); *Cruz v. Melendez*, 902 F.2d 232, 235-36 (3d Cir. 1990); *Shatah v. Shearson/Am. Express, Inc.*, 873 F.2d 550, 552 (2d Cir. 1989); *Cotton v. U.S. Pipe & Foundry Co.*, 856 F.2d 158, 160-62 (11th Cir. 1988).

an appeal by any partnership other than Dalton Development Project No. 1. More recently, the Tenth Circuit held that a notice of appeal describing the appealing plaintiffs as "OTR Drivers at Topeka Frito-Lay, Inc.'s Distribution Center on behalf of themselves and all other employees of Frito-Lay, Inc. similarly situated" likewise failed to perfect an appeal by anyone other than "OTR Drivers," an amorphous entity which the court held lacked standing to appeal. *OTR Drivers at Topeka Frito-Lay, Inc.'s Distribution Ctr. v. Frito-Lay, Inc.*, 988 F.2d 1059, 1061-62 (10th Cir. 1993).

As demonstrated by the foregoing cases (and many others), it is eminently reasonable for a decision maker to reject as unintelligible and inadequate a document purporting to perfect the rights of parties identified only by vague phrases such as "et al." or "and its member companies." Indeed, in *Torres*, this Court held that courts *must* reject such obscure attempts to identify appellants. In the present case, the Commerce Department did nothing more than apply reasoning indistinguishable from that employed in *Torres*, yet the court of appeals held the Department's decision "unlawful." 6 F.3d at 761 [Appendix at 12-a]. The decision below amounts to a flat prohibition against an administrative agency's use of the *Torres* rationale as a means of identifying the proper parties to its proceedings. The court of appeals cited no authority for this extraordinary interference with an agency's right to govern proceedings before it, and we respectfully submit that no such authority exists.[8]

Administrative agencies have broad latitude in interpreting and enforcing their own procedural regulations and require-

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[8] Notably, the decision below was not the first time the Federal Circuit has ruled in conflict with this Court's analysis in *Torres*. Two months earlier, in *Davis v. Loesch*, 998 F.2d 963, 965-66 (Fed. Cir. 1993), the same court purported to distinguish *Torres* in holding that a notice of appeal filed with the Board of Patent Appeals and Interferences, captioned "DAVIS, ET AL.," was sufficiently specific to confer jurisdiction over the appeal of a party other than Davis himself.

ments. *See, e.g., Lyng v. Payne*, 476 U.S. 926, 939 (1986); *Zenith Radio Corp. v. United States*, 437 U.S. 443, 450 (1978). Accordingly, agencies should be permitted to insist that parties seeking to initiate or challenge agency action timely identify themselves with at least as much specificity as parties who take an appeal to a court of appeals. The agencies and the parties before them have a strong interest in ensuring the integrity of regulatory deadlines and the finality of agency action. As previously discussed, these interests are particularly strong with respect to deadlines in "sunset" regulations such as the Commerce Department regulation at issue here, 19 C.F.R. § 355.25(d)(4), the integrity of which is central to the expectations of foreign governments and other parties who enter into suspension agreements with the United States Government.

In the present case, however, the court of appeals ignored these important interests and rebuked the Commerce Department precisely *because* it adopted an interpretation of its sunset regulation that was identical to the approach mandated by this Court in *Torres* for federal courts. The decision below is particularly anomalous because the Commerce Department's insistence on strict compliance with its regulatory requirements resulted in comparatively little of the harshness tolerated by this Court in *Torres*. For example, unlike in *Torres* and numerous similar cases, where the "et al." designation necessarily limits the universe of potential appellants intended to be included (and in many cases leaves little or no doubt at all), ATMI's vague reference to unidentified "member companies" created a relatively large, unknown, and possibly changing universe of potential objectors from among its approximately 150 members.[9] In addition, in this particular case, as the Commerce Department

[9] Indeed, as evidenced by the opinions below, to this day there remains uncertainty regarding which specific member companies ATMI allegedly included by referring to "its member companies." Counsel for ATMI later provided the Commerce Department with a list of 26 member companies on whose behalf ATMI purportedly had acted, but that list included only three

made clear in its decision rejecting ATMI's letter-objection and terminating the investigation, ATMI was explicitly on notice that the Department did not consider it an interested party with standing to object, so there was no mere "clerical error" such as that involved in *Torres*.

Finally, unlike *Torres* and other cases, the court of appeals' decision in this case creates a real possibility of procedural mischief by a trade association in the administrative process. Such an organization, even when it knows it lacks standing in its own right, easily could frustrate any number of administrative sunset regulations and other deadlines simply by making timely filings purportedly on behalf of unidentified members, and then canvassing its membership to find at least one member to pursue what would otherwise be an untimely endeavor. As explained by then-Judge Ginsburg in an analogous context:

> Were we to agree with [the trade association], an organization without current standing to sue could file a timely petition for review and thereby extend the statutory period while it seeks out and signs up a person who could have sued but did not do so within the prescribed time. Such an approach to timeliness would render the finality of agency action an uncertain, sometimes thing.

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of the eight members that had previously participated in the proceeding. Compounding this confusion, the complaint in the CIT named all eight of the original petitioning member companies, even though five of them had not been named in counsel's list. (In fact, one of those five member companies no longer even existed at this late stage, and thus had its claim pursued in the courts by three successors in interest.) Ultimately, perhaps due to this shifting alignment of the parties asserting an interest in the matter, the courts below erroneously assumed, contrary to ATMI's own submissions, that ATMI's March 30, 1990 letter-objection was purportedly filed on behalf of *all eight* members that had previously participated in the agency proceeding. *See, e.g.*, 6 F.3d at 759 and 761 [Appendix at 8-a and 11-a].

Petro-Chem Processing, Inc. v. EPA, 866 F.2d 433, 437 (D.C. Cir.), *cert. denied*, 490 U.S. 1106 (1989); *cf.* H.R. REP. NO. 317, 96th Cong., 1st Sess. 50 (1979) (explaining that the statutory limitation placed on standing of trade associations in Commerce Department proceedings "is intended to preclude large associations representing a diverse group of manufacturers from obtaining a right to take part in every proceeding").

Because the decision below is in conflict with the fundamental rationale of *Torres* and its progeny in other federal circuits, and because it adversely affects the interests of foreign governments and exporters who trade with the United States and enter into contracts with the United States Government, the Court should issue a writ of certiorari to the Federal Circuit and decide the question of whether the *Torres* rationale may be applied by administrative agencies interpreting their own regulatory time deadlines.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit.

Dated: December 6, 1993

Respectfully submitted,

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United States Court of Appeals for the Federal Circuit

92-1419, -1451

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Plaintiffs-Appellees,

v.

THE UNITED STATES,

Defendant-Appellee,

GOVERNMENT OF COLUMBIA,

Defendant-Appellant,

and

ROYAL THAI GOVERNMENT,

Defendant-Appellant.

United States Court of Appeals for the Federal Circuit

92-1452, -1483

BELTON INDUSTRIES, INC; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC.; SHUFORD MILLS, INC.; DELTA-WOODSIDE MILLS, INC.; WEST POINT-PEPPERELL, INC.; BIBB MANUFACTURING COMPANY and JPS TEXTILES as successors in interest to J.P. STEVENS & CO., INC.; WEST POINT-PEPPERELL, INC. and THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC. for itself and on behalf of BELTON INDUSTRIES, INC.; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC. and SHUFORD MILLS, INC.;

Plaintiffs-Appellees,

v.

THE UNITED STATES,

Defendant-Appellee,

GOVERNMENT OF COLOMBIA,

Defendant,

and

ROYAL THAI GOVERNMENT,

Defendant-Appellee,

v.

GOVERNMENT OF SRI LANKA,

Appellant,

and

GOVERNMENT OF PERU,

Appellant.

Kenneth J. Pierce, Willkie Farr & Gallagher, of Washington, D.C. argued for Defendant-Appellant, Royal Thai Government. With him on the brief were *William H. Barringer* and *Daniel L. Porter.*

Gregory J. Spak, Mudge, Rose, Guthrie, Alexander & Ferdon, of Washington, D.C., for the Appellants, Government of Colombia and Government of Sri Lanka. With him on the brief were *Michael P. Daniels* and *Gary Welsh*, Prather, Seeger, Doolittle and Farmer, of Washington, D.C., for the Government of Peru.

Ginger L. Levy, Wilmer, Cutler & Pickering, of Washington, D.C., argued for Plaintiffs-Appellees, Belton Industries, Inc. et al. With her on the brief were *John D. Greenwald* and *Ronald I. Meltzer.*

Appealed from: Untied States Court of International Trade

Judge Carman

v.

THE UNITED STATES,

Defendant-Appellee,

GOVERNMENT OF COLOMBIA,

Defendant,

and

ROYAL THAI GOVERNMENT,

Defendant-Appellee,

v.

GOVERNMENT OF SRI LANKA,

Appellant,

and

GOVERNMENT OF PERU,

Appellant.

DECIDED: September 7, 1993

Before ARCHER, *Circuit Judge*, BENNETT, *Senior Circuit Judge*, and RADER, *Circuit Judge*.

RADER, *Circuit Judge*.

The Government of Colombia and the Royal Thai Government appeal the Court of International Trade's reversal of the Commerce Department's (Commerce's) termination of textile and apparel product investigations. *Belton Indus., Inc. v. United States*, Consolidated Court No. 90-09-00474, slip op. no. 92-39, (Ct. Int'l Trade Mar. 24, 1992); slip op. no. 92-64 (Ct. Int'l Trade May 7, 1992). The governments of Sri Lanka and Peru appeal the trial 92-1419, -1451, -1452, -1483 court's denial of their post-judgment motions to intervene in that court's review of Commerce's revocation of countervailing duty orders on textile and apparel products. *Belton Indus., Inc. v. United States*, Consolidated Court No. 90-09-00474, slip op. no. 92-102 (Ct. Int'l Trade July 7, 1992). Because domestic textile manufacturers timely objected to the proposed terminations, this court affirms the Court of International Trade's judgment on the Colombian and Thai textile product proceedings. This court also affirms the denial of the untimely motions to intervene. Because no interested party objected to the proposed termination in the Colombian apparel proceeding, however, this court reverses the judgment on that proceeding.

Background

In August 1984, Commerce initiated countervailing duty (CVD) investigations into textile and apparel products from Argentina, Colombia, Peru, Sri Lanka, and Thailand. Com-

merce investigated separately textile products and apparel products from each country. After its investigations, Commerce issued CVD orders for textile and apparel products of Argentina, Peru, and Sri Lanka and for apparel products from Thailand. *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Argentina, 50 Fed. Reg. 9846 (Mar. 12, 1985); Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru; and Rescission of Initiation of Investigations With Respect to Hand-Made Alpaca Apparel and Hand-Made Carpets and Tapestries*, 50 Fed. Reg. 9871 (Mar. 12, 1985); *Final Affirmative Countervailing Duty Determinations and Orders; Certain Textile Mill Products and Apparel From Sri Lanka; Cotton Inspectors' Gloves*, 50 Fed. Reg. 9826 (Mar. 12, 1985); *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel From Thailand*, 50 Fed. Reg. 9818, 9819 (Mar. 12, 1985). Reaching agreements with the respective foreign governments, Commerce suspended its investigations of textile products from Thailand and of textile and apparel products from Colombia. *Certain Textile Mill Products From Thailand; Suspension of Countervailing Duty Investigation*, 50 Fed. Reg. 9832 (Mar. 12, 1985); *Certain Textile Mill Products and Apparel From Colombia; Suspension of Countervailing Duty Investigations*, 50 Fed. Reg. 9863 (Mar. 12, 1985).

Appellees are eight members of the American Textile Manufacturing Institute (ATMI), a trade association. ATMI and two domestic unions, the Amalgamated Clothing and Textile Workers Union (ACTWU) and the International Ladies Garment Workers Union (ILGWU), were the original petitioners in the CVD investigations. When questions arose concerning ATMI's standing as an interested party, ATMI amended the petitions to add eight of its member companies as petitioners. Commerce determined that the eight companies had standing as

"interested parties" for the textile product investigations. *Preliminary Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Indonesia*, 49 Fed. Reg. 49672, 49673 (Dec. 21, 1984). Commerce recognized ACTWU and ILGWU as interested parties for the apparel investigations. *Id.* Commerce made both decisions final in *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Malaysia*, 50 Fed. Reg. 9852, 9852-53 (Mar. 12, 1985).[1]

With one exception not at issue,[2] no interested party requested administrative review of the CVD orders or the suspension agreements for the next four years. In February and March 1990, under 19 C.F.R. § 355.25(d)(4)(i) (1990), Commerce published in the Federal Register notice of its intent to revoke

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[1] Commerce adopted these findings in its orders concerning products from the five countries whose products were under investigation. *See Final Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Columbia*, 52 Fed. Reg. 13272, 13273 (Apr. 22, 1987); *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru; and Rescission of Initiation of Investigations With Respect to Hand-Made Alpaca Apparel and Hand-Made Carpets and Tapestries*, 50 Fed. Reg. 9871, 9872 (Mar. 12, 1985); *Certain Textile Mill Products and Apparel From Columbia; Suspension of Countervailing Duty Investigations*, 50 Fed. Reg. 9863, 9864 (Mar. 12, 1985); *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Argentina*, 50 Fed. Reg. 9846, 9847 (Mar. 12, 1985); *Certain Textile Mill Products From Thailand; Suspension of Countervailing Duty Investigation*, 50 Fed. Reg. 9832, 9839 (Mar. 12, 1985); *Final affirmative Countervailing Duty Determinations and Orders; Certain Textile Mill Products and Apparel From Sri Lanka; Cotton Inspectors' Gloves*, 50 Fed. Reg. 9826, 9826-27 (Mar. 12, 1985); *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel From Thailand*, 50 Fed. Reg. 9818, 9819 (Mar. 12, 1985).

[2] Apparently, Commerce reviewed the countervailing duty order on apparel from Argentina for the years 1986 and 1989. These reviews, however, are not before this court.

the CVD orders and to terminate the suspended investigations. *See Certain Textile Mill Products and Apparel From Peru; Intent To Revoke Countervailing Duty Orders*, 55 Fed. Reg. 7358 (Mar. 1, 1990); *Certain Textile Mill Products and Apparel From Sri Lanka Intent To Revoke Countervailing Duty Orders*, 55 Fed. Reg. 7358 (Mar. 1, 1990); *Certain Textile Mill Products From Argentina Intent To Revoke Countervailing Duty Order*, 55 Fed. Reg. 7358 (Mar. 1, 1990); *Certain Textile Mill Products and Apparel From Colombia and Certain Textile Mill Products From Thailand; Intent To Terminate Suspended Investigations*, 55 Fed. Reg. 6669 (Feb. 26, 1990). Commerce did not send separately written notice to the interested parties in any of the proceedings. Commerce did send, however, written notice to ATMI of the proposed revocations of CVD orders on products from Argentina and Peru. Commerce also sent written notice to Wilmer, Cutler and Pickering (Wilmer), the law firm representing ATMI and the eight individual companies,[3] of the proposed revocations of CVD orders on products from Peru and Sri Lanka. It sent no written notice of the proposed termination of the investigations of products from Colombia and Thailand. Commerce sent no written notice of any of the eight individual appellees in any of the proceedings. The Federal Register notice and the written notices gave interested parties until March 31, 1990 to file objections.

On March 30, 1990, Wilmer sent to Commerce letters objecting to each of the proposed revocations and terminations. Wilmer sent the objections "on behalf of the American Textile Manufacturers, Institute, Inc. ('ATMI') and its member companies." Commerce refused to recognize the objections on the grounds that ATMI did not have standing to object. In letters dated June 14, 1990 and July 13, 1990, Wilmer explained that

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[3] Although representing the apparel unions during the original investigations, Wilmer apparently did not represent the unions at the time Commerce sent notice of its proposed revocations and terminations.

it had filed the March 30, 1993 objections on behalf of the eight members of ATMI whom Commerce previously had recognized as interested parties. Commerce rejected this explanation as an untimely attempt by the eight companies to object.

On August 3, 1990, Commerce revoked the CVD orders against products from Argentina, Peru, and Sri Lanka and terminated the suspended investigation of textile and apparel products from Colombia. 55 Fed. Reg. 32940, 32940-43, (Aug. 13, 1990). On November 15, 1990, Commerce terminated in part the suspended investigation of textile products from Thailand. *Certain Textile Mill Products From Thailand; Termination of Suspended Countervailing Duty Investigations (in Part)*, 55 Fed. Reg 48885, 48885-87 (Nov. 23, 1990).

Court of International Trade Decision

The Court of International Trade granted judgment on the agency record to appellees under Court of International Trade Rule 56.1. *Belton Indus., Inc. v. United States*, Consolidated Court No. 90-09-00474, slip op. no. 92-39 (Ct. Int'l Trade Mar. 24, 1992); *see also, Belton Indus., Inc. v. United States*, Consolidated Court No. 90-09-00474, slip op. no 92-64 (Ct. Int'l Trade May 7, 1992) (revising Mar. 24, 1992 order). The trial court held the revocations and terminations unlawful because Commerce had violated its regulations requiring written notice to appellees. The court ruled in the alternative that the revocations and terminations were unlawful because appellees had submitted timely objections to Commerce in each of the proceedings.

Two months after the Court of International Trade first granted appellees' motion for judgment upon the agency record, the governments of Sri Lanka and Peru sought to intervene. The court ruled that the Royal Thai government's filing of a Notice of Appeal from the court's earlier grant of judgment to appellees divested the court of jurisdiction over the case and the motions. In the alternative, the court denied the motions as untimely after

balancing the factors presented in *Sumitomo Metal Indus., Ltd. v. Babcock & Wilcox Co.*, 669 F.2d 703 (CCPA 1982).

Discussion

Standards of Review

Appellees instituted this consolidated action before the Court of International Trade under 19 U.S.C. § 1516a(a) (2) (B) (iii) (1988), which allows any interested party to challenge Commerce's final determinations to revoke CVD orders or to terminate suspended investigations. By its terms, 19 U.S.C. § 1516a(a) (2) (B) (iii) (1988) allows interested parties to contest "[a] final determination . . . by the administering authority or the Commission under section 1675 of this title." 19 U.S.C. § 1675(c) (1988) authorizes Commerce, after review, to revoke CVD orders and antidumping orders and to terminate suspended investigations.

The Court of International Trade reviews Commerce's determinations for sufficiency of evidence and accordance with law. 19 U.S.C. § 1516a(b) (1) (B) (1988). Although reviewing the Court of International Trade's judgment, 28 U.S.C. § 1295(a) (5) (1988), this court must also review Commerce's final determination and the agency record to check the Court of International Trade's application of the statutory standard of review. *Matsushita Elec. Indus. Co. v. United States*, 750 F. 2d 927, 932 (Fed. Cir. 1984). This court also reviews the Court of International Trade's determinations on the timeliness of Sri Lanka's and Peru's motions for abuse of discretion. *Sumitomo*, 669 F.2d at 707.

Sufficiency of Notice

The Court of International Trade rejected Commerce's termination of the suspended investigations of Colombian textile and apparel products and Thai textile products. 19 C.F.R. § 355.25(d) (1990) governs:

> (4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the FEDERAL REGISTER notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."
>
> (ii) Not later than the date of publication of the notice described in paragraph (d) (4) (i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.
>
> (iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests and administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d) (1) (i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the FEDERAL REGISTER the notice described in paragraph (d) (3) (vii) of this section.

Commerce did not send written notice to appellees in either of the textile product proceedings, despite its prior recognition of them as interested parties. Hence, Commerce violated 19 C.F.R. § 355.25(d) (4) (ii) (1990).

Despite Commerce's violation, appellees suffered no prejudice. Appellees' counsel, Wilmer, received actual notice of each proposed termination. In fact, Wilmer acted on that actual notice by filing timely objections on behalf of ATMI and the eight companies in each proceeding. Notice to counsel is notice to the client unless the applicable notice provision expressly

requires otherwise. *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 92-93 (1990). Here, 19 C.F.R. § 355.25(d) does not state that notice to counsel is insufficient. Because appellees' counsel received actual notice, Commerce's violation did not prejudice appellees. Accordingly, Commerce's violation was harmless error. *See Cornelius v. Nutt*, 472 U.S. 648, 663 (1985) (holding that agency delay in providing notice of impending employee removal proceeding was harmless error because it did not cause substantial harm or prejudice).

Nonetheless, the Court of International Trade correctly found that Commerce should have accepted the March 30, 1990 letters from Wilmer as proper and timely objections on behalf of the eight appellees. Under 19 C.F.R. § 355.25(d) (4) (iii), Commerce could terminate the suspended proceedings only if no interested party objected by the March 31, 1990 deadline. Wilmer sent letters timely objecting to each of the proposed actions "on behalf of [ATMI] and its member companies." Commerce already had recognized that the eight companies were interested parties. Commerce had recognized them as interested parties when ATMI amended the original petitions and substituted the companies as petitioners. Under these circumstances, Commerce should have known exactly to whom Wilmer was referring when Wilmer indicated that it was sending the letters on behalf of ATMI "and its member companies."

The statute does not impose on interested parties an exacting standard for filing objections. Neither does the regulation require exactitude from objecting parties. Rather, it requires reasonable notice to Commerce of objection to a proposed termination. Wilmer gave Commerce, and the foreign governments, reasonable notice of the objection and of the identities of the interested parties. In these same proceedings, Commerce had previously recognized the eight companies as interested parties. Therefore, Commerce's own files revealed, or should have revealed, the identities of the eight companies. In light of

the contest over recognition of the eight companies' standing as interested parties, Commerce and the respective foreign governments knew or should have known the identities of the objecting parties from Wilmer's description.

In sum, 19 C.F.R. § 355.25(d) applies a reasonable notice standard to both Commerce's obligation to inform interested parties and interested parties' objections to Commerce. Accordingly, this court affirms the Court of International Trade's holding that Commerce's termination of the suspended investigations of textile products from Colombia and Thailand was unlawful.

The record reveals that no interested party filed an objection to the notice of proposed termination for apparel products from Colombia. Neither ATMI nor the eight companies are interested parties with respect to the apparel proceedings.[4] Without being interested parties, they did not have standing to appeal the termination of the Colombian apparel investigation. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (plaintiffs do not have standing to assert legal rights or interests of third parties); *McGowan v. Maryland*, 366 U.S. 420, 429 (1961) (same). Therefore, the trial court could not properly reach the merits of a claim that Commerce unlawfully terminated that investigation. Accordingly, this court reverses the Court of International Trade's judgment and order holding unlawful the termination of the suspended investigation of Colombian apparel products.

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[4] During oral argument this court learned that Wilmer, Cutler and Pickering did not represent the unions at the time it received notice of Commerce's proposed revocations and terminations. This disclosure calls into question Commerce's termination of the suspended investigation of Columbian products due to its termination of the failure to notify all interested parties. The interested unions, however, did not file an appeal to the Court of International Trade.

Motions to Intervene

Court of International Trade Rule 24(a) provides that "[u]pon timely application, anyone shall be permitted to intervene in an action" under certain circumstances. Under *Sumitomo*, the Court of International Trade evaluated the timeliness of Sri Lanka's and Peru's post-judgment motions in light of three factors:

> (1) the length of time during which the would-be intervenor[s] actually knew or reasonably should have known of [their] right[s] . . . ;
>
> (2) whether the prejudice to the rights of existing parties by allowing intervention outweighs the prejudice to the would-be intervenor[s] by denying intervention.
>
> (3) existence of unusual circumstances militating either for or against a determination that the application is timely.

Sumitomo, 669 F.2d at 707 (footnotes omitted).

Both Sri Lanka and Peru were aware of the Court of International Trade proceedings from their inception. Although their rights to intervene arose when the eight ATMI companies instituted proceedings in the Court of International Trade, *id.* at 707-08, Sri Lanka and Peru chose to wait nearly two years before seeking to intervene. If the trial court had allowed Sri Lanka and Peru to intervene, appellees would have suffered prejudice. Specifically, appellees would have had to defend against two additional parties and address new issues in a case that had already been decided. This prejudice outweighs any harm to Sri Lanka and Peru caused by their own tactical decisions not to appear in the Court of International Trade proceeding. No unusual circumstances warrant granting the motions.

Both Sri Lanka and Peru were content to sit on the sidelines during this dispute and let other parties, particularly the United

States Government, do the heavy lifting. They sought to intervene only when they realized, too late, that these other parties would not do all of their work for them. This court discerns no abuse of discretion in the Court of International Trade's weighing of the *Sumitomo* factors or its denial of Sri Lanka's and Peru's motions to intervene.

In addition, because Sri Lanka was not a party, the trial court properly denied its Rule 60(b) motion. Only parties may file Rule 60(b) motions. Ct. Int'l Trade R. 60(b). Accordingly, this court affirms the Court of International Trade's denial of Sri Lanka's and Peru's motions to intervene and declines to review that portion of the Court of International Trade's May 7, 1992 order and March 24, 1992 opinion on CVD orders for products from Sri Lanka and Peru.

Conclusion

For the reasons stated above, this court affirms the order of the Court of International Trade denying Sri Lanka's and Peru's motions to intervene. This court also affirms the judgment of the court in holding unlawful Commerce's termination of suspended investigations of textile products from Colombia and Thailand. This court reverses the judgment of the court holding unlawful Commerce's termination of the suspended investigation of apparel products from Colombia.

Costs

Each party to bear its own costs.

AFFIRMED-IN-PART, REVERSED-IN-PART

Slip Op. 92-39

United States Court of International Trade

BELTON INDUSTRIES, INC., et al.
Plaintiffs,

v.

UNITED STATES,
Defendant,

and

GOVERNMENT OF COLOMBIA,
ROYAL THAI GOVERNMENT,
Defendant-Intervenors.

Consolidated
Court No. 90-09-00474

BEFORE: CARMAN, Judge

[Plaintiffs' motion for judgment upon the agency record is granted; The case is remanded to Commerce with instructions to rescind the revocation and termination orders in connection with which this action arises and for disposition of these matters consistent with this Court's ruling.]

March 24, 1992

Wilmer, Cutler & Pickering (*A. Douglas Melamed* and *Ronald I. Meltzer*), for Plaintiffs.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Vanessa P. Sciarra*), *Douglas S. Cohen*, Attorney-Advisor, Office of Chief Counsel

for Import Administration, United States Department of Commerce, for Defendant.

Willkie, Farr & Gallagher (*William H. Barringer, Kenneth J. Pierce*, and *Daniel L. Porter*), for Defendant-Intervenor Royal Thai Government; *Mudge, Rose, Guthrie, Alexander & Ferdon* (*Michael P. Daniels, Christine Bliss*, and *Gregory Spak*), for Defendant-Intervenor Government of Columbia.

Opinion and Order

CARMAN, Judge: Plaintiffs move for summary judgment in this consolidated action seeking to rescind the revocation and termination orders issued by the United States Department of Commerce ("Commerce") for certain textile mill products and apparel from Argentina, Columbia, Peru, Sri Lanka, and Thailand.[1] Because the Plaintiffs invoke the Court's jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) (1988) and 28 U.S.C. § 1581(c) (1988), Plaintiffs' motion will be treated as one for judgment upon the agency record in accordance with Rule 56.1.[2]

Plaintiffs contend that no prior actual written notice of Commerce's intent to revoke and terminate those proceedings

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[1] The revocation and termination orders that are the subject of this action are *Certain Textile Mill Products from Argentina; Revocation of Countervailing Duty Order*, 55 Fed. Reg. 32, 940 (1990); *Certain Textile Mill Products and Apparel from Columbia; Termination of Suspended Countervailing Duty Investigations*, 55 Fed. Reg. 32, 940 (1990); *Certain Textile Mill Products and Apparel from Peru; Revocation of Countervailing Duty Orders*, 55 Fed. Reg. 32,941 (1990); *Certain Textile Mill Products and Apparel from Sri Lanka; Revocation of Countervailing Duty Orders*, 55 Fed. Reg. 32,942 (1990); and *Certain Textile Mill Products from Thailand; Termination of Suspended Countervailing Investigation (in Part)*, 55 Fed. Reg. 48,885 (1990).

[2] The standard of review under these provisions is whether the agency's determination is based upon substantial evidence *on the record* and is otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(1988).

was served upon the Plaintiff petitioners, as required under the so-called "sunset" provisions of the countervailing duty regulations. 19 C.F.R. § 355.25 (d)(4)(ii) (1990). Plaintiffs urge furthermore that because timely objections were filed on behalf of the American Textile Manufacturing Institute ("ATMI") and its member companies, Commerce improperly disregarded its own regulations when it terminated the countervailing duty investigations.[3]

Defendant United States, opposing the motion, requests the Court to sustain the countervailing duty revocation and termination orders and seeks dismissal of the action. Defendant-Intervenors support the argument of Defendant.

Facts

In July 1984, ATMI and two domestic unions representing textile workers filed petitions with Commerce requesting countervailing duty investigations with respect to certain textile mill products and apparel from Argentina, Colombia, Peru, Sri Lanka, and Thailand. In November 1984, after the initiation of the investigation, several respondents maintained that ATMI was not an "interested party" within the meaning of 19 U.S.C. § 1677(9)(D) and (E) (1988) and, therefore, was ineligible to file a countervailing duty petition under 19 U.S.C. § 1671a(b)(1) (1988). Defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment ("Def. Mem.") at 4. Commerce advised Wilmer, Cutler, and Pickering ("Wilmer"), counsel for

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[3] The named Plaintiffs in this action are Belton Industries, Inc.; Burlington Industries, Inc.; Chatham Manufacturing Co.; Milliken & Co.; Mount Vernon Mills, Inc.; Shuford Mills, Inc.; Delta-Woodside Mills, Inc., West Point-Pepperell, Inc., Bibb Manufacturing Company, and JPS Textiles, all of which are successors in interest to J. P. Stevens & Co., Inc.; West Point-Pepperell, Inc.; and the American Textile Manufacturing Institute ("ATMI") for itself and on behalf of Belton Industries, Inc.; Burlington Industries; Chatham Manufacturing Co.; Milliken & Co.; Mount Vernon Mills, Inc.; and Shuford Mills, Inc.

petitioners and for Plaintiffs in this action, that Commerce would need more information about ATMI and the two domestic unions to determine if they were interested parties. *See* Administrative Record filed with the Court November 26, 1990 ("A.R. Doc."), Document 1 at 1.

Wilmer responded to Commerce and requested that the petitions be amended and that eight textile manufacturers, all members of ATMI, be added in their individual capacities as petitioners. A.R. Doc. 2 at 1, 10-11 and Ann. 1.[4]

In December 1984, Commerce issued five affirmative preliminary countervailing duty determinations, all of which discussed the question of ATMI's standing by reference to a related affirmative preliminary countervailing duty determination concerning textile mill products and apparel from Indonesia. 49 Fed. Reg. 49,672. (1984). *See* A.R. Doc. 3; 49 Fed. Reg. 49,667 (Argentina), 50,753 (Columbia), 49,678 (Peru), 49,687 (Sri Lanka), and 49,661 (Thailand) (1984). In the Indonesia determination Commerce indicated that ATMI had failed to provide its membership list or the products produced by its members, and concluded that ATMI was not an interested party and lacked standing as a petitioner. 49 Fed. Reg. at 49,673. Commerce, noting that absent other information it would have rescinded its investigations, determined that the original petitions in the textile investigation had been amended to name the eight textile manufacturers as petitioners and that "[t]hese eight companies collectively appear to satisfy the interested party requirements of the Act . . . ." *Id.*

On March 12, 1985, Commerce published final affirmative countervailing duty determinations on certain textile mill products and apparel from Argentina, Peru, and Sri Lanka, issued

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[4] The added petitioning companies were Belton Industries, Inc.; Burlington Industries, Inc.; Chatham Manufacturing Co., Milliken Co.; Mount Vernon Mills, Inc.; Shuford Mills, Inc.; J.P. Stevens & Co.; and West Point-Pepperell, Inc.

countervailing duty orders for these countries respectively, and suspended countervailing duty investigations of certain textile mill products and apparel from Columbia and Thailand. A.R. Doc. 4; 50 Fed. Reg. 9,846 (Argentina), 9,871 (Peru), and 9,826 (Sri Lanka), and 9,863 (Columbia) (1985); Administrative Record covering the Thailand proceedings filed with the Court on March 10, 1991, as supplemented by Commerce on May 8, 1991 ("Thailand A.R. Doc."), Document 19; 50 Fed. Reg. 9,832 (1985) (Thailand). In all five of these determinations Commerce discussed the issue of ATMI's standing by reference to the related final countervailing duty determinations concerning certain textile mill products and apparel from Malaysia. *See* 50 Fed. Reg. 9,852, 9,853 (1985). Commerce again found that ATMI lacked standing and the eight companies added as petitioners "collectively" had standing.[5]

On February 26, 1990, Commerce published notice of intent to terminate the suspended countervailing duty investigations on certain textile products from Colombia and Thailand. A.R. Doc. 7; 55 Fed. Reg. 6,669 (1990). On March 1, 1990, Commerce published notice of its intent to revoke countervailing duty orders for certain textile mill products and apparel from Argentina, Peru, and Sri Lanka. A.R. Doc. 7; 55 Fed. Reg. 7,358 (1990). Additionally, Commerce published notice of intent to revoke the countervailing duty order pertaining to certain apparel from Thailand which had not been included in the suspension agreement. A.R. Doc. 7; 55 Fed. Reg. 7,356 (1990). The published notices indicated that any interested party who objected to the revocation or termination had until March 31, 1990, to submit objections in writing, and that if no interested party requested an administrative review or objected to the proposed

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[5] Commerce reaffirmed the standing of the eight petitioning companies in a later final determination covering textile mill products from Thailand. Thailand A.R. Doc. 20; 52 Fed. Reg. 7,636, 7,637 (1987).

action, Commerce would proceed with the revocations and terminations.

On February 28, 1990, Commerce sent letters to ATMI and to Wilmer, identifying them as "interested parties" and notifying them of Commerce's intent to revoke countervailing duty orders on certain textiles, textile products, and apparel from Argentina, Peru, and Sri Lanka. A.R. Doc. 6. *See* Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 7. Defendant concedes that in the Argentina case, while Wilmer was listed on the interested party list, ATMI, which was not on the list, was provided with a letter while Wilmer was not. *See* Def. Mem. at 8; A.R. Docs. 5, 6. In the Peruvian case, both ATMI and Wilmer were identified as interested parties and were sent letters to that effect. A.R. Docs. 5, 6. In the Sri Lankan case Wilmer, but not ATMI, was identified as an interested party and was sent a notice letter.

With respect to Commerce's intent to terminate the suspended investigations in the Columbia and Thailand proceedings, there is no record evidence that Commerce served written notice upon ATMI, Wilmer, or any of the eight petitioning companies. Defendant concedes that while the interested party lists in the two suspended investigations include Wilmer, no copies of letters mailed to Wilmer or to any other parties could be located. Def. Mem. at 8 n. 11;

On March 30, 1990, Wilmer wrote a series of letters to Commerce which were substantially the same except for their references to specific investigations. A.R. Doc. 8; Thailand A.R. Doc. 4. Each of the letters stated that "on behalf of [ATMI] and its members companies, we hereby inform you that ATMI objects to" Commerce's proposed revocation and termination orders. In the letters, Wilmer identified the invoice numbers of the subject proceedings as well as the Federal Register notifications reflecting Commerce's intent to revoke and terminate those proceedings.

Commerce responded on May 29, 1990, to Wilmer acknowledging receipt of letters on behalf of ATMI objecting to Commerce's announced intent to revoke the countervailing duty orders and to terminate the suspended countervailing duty investigations. In the letter Commerce advised that because ATMI was not an interested party, its objection was invalid. However, Commerce gave ATMI an opportunity to provide additional information demonstrating ATMI was an interested party. A.R. Doc. 10; Thailand A.R. Doc. 9. Commerce also stated that it "[would] not accept the substitution of objections by other interested parties in place of that submitted by ATMI because such objections would be untimely pursuant to 19 CFR 355.25(d)(4)." *Id.*

On June 14, 1990, Wilmer responded to Commerce with a series of identical letters filed in each investigation. A.R. Doc. 11; Thailand A.R. Doc. 11.[6] Wilmer explained that the letters of March 30, 1990 had been written on behalf of ATMI which "was acting on behalf of the individual companies listed in the Attachment to [the] letter[s]. Each of those companies is a manufacturer of itemized like products - - and therefore an interested party with the right to oppose the proposed revocations." *Id.*[7]

Later in June 1990, Commerce received letters from the governments of Argentina, Columbia, Sri Lanka, Peru, and Thailand arguing that Wilmer's March 30, 1990 opposition letters were properly rejected by Commerce because ATMI was not an interested party and Wilmer's subsequent attempt to object for the eight petitioning companies was untimely. A.R. Doc. 12; Thailand A.R. Doc. 16. On July 13, 1990, Wilmer

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[6] Although there is apparently no dispute that on June 14, 1990, Wilmer sent a letter for each investigation, the record contains only those letters pertaining to the Columbian and Thai investigations.

[7] The Court notes that the attachment to Wilmer's letter appears to name four of the eight petitioning companies.

responded to these arguments, contending that the reference to ATMI "and its member companies" provided an adequate basis for the objections because ATMI's member companies were known producers of like products and therefore met the interested party requirements. A.R. Doc. 13; Thailand A.R. Doc. 13.

On August 13, 1990, Commerce published final revocation and termination orders covering certain textiles, textile mill products, and apparel from Argentina, Columbia, Peru, and Sri Lanka. A.R. Doc. 14. On November 23, 1990, Commerce published a termination order covering the suspended countervailing duty investigation in certain textile mill products from Thailand, in part. Thailand A.R. Doc. 17.

In each of the final orders, Commerce set forth the reasons for its rejection of Wilmer's March 30, 1990 objection letters. Commerce determined, after indicating that ATMI had prior notice that it was not an interested party, that the only proper objections could have come from the eight petitioning companies; those objections were never raised because the objection letters did not clearly identify those companies. 55 Fed. Reg. at 32,940 (Argentina), 32,941 (Columbia), 32,942 (Peru), 32,943 (Sri Lanka), 48,885 (Thailand). Commerce concluded that because it received no valid objection to the proposed revocation and termination orders those orders should become final.

Discussion

The applicable regulations governing the dispute are set forth at 19 C.F.R. § 355.25(d)(4)(i)-(iii). They provide:

> (4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the FEDERAL REGISTER

> notice of 'Intent to Revoke Order' or, if appropriate, 'Intent to Terminate Suspended Investigation.'
>
> (ii) Not later than the date of publication of the notice described in paragraph (d)(4)(i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.
>
> (iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(l)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the FEDERAL REGISTER the notice described in paragraph (d)(3)(vii) of this section.

19 C.F.R. 355.25(d)(4)(i)-(iii) (1990).

The regulations make clear that, in addition to requiring publication in the Federal Register of an intention to revoke a countervailing duty order or terminate a suspended investigation, Commerce is required to serve written notice upon each interested party on Commerce's service list, also known as the interested party list. The purpose of these notice requirements is obvious. Notice is designed to give interested parties an opportunity to be heard and to make not only timely but also *proper* objections.

Indeed, the Department of Commerce has recently rescinded its revocation of an antidumping finding because it failed to provide written notification to an interested party as required by 19 C.F.R. § 355.25(d)(4)(ii). *See Polychloroprene Rubber from Japan; Recision of Revocation of Antidumping*

Finding, 56 Fed. Reg. 5,979 (1991). Moreover, the fact that a petitioner might have had actual notice of an impending agency action sometime during the proceedings does not relieve the agency of its legal obligation to provide written notice when that kind of notice is prescribed in the agency's own regulations. *See Tex Mex Brick & Import Co. v. United States*, 63 Cust. Ct. 218, 221-22, 305 F. Supp. 927, 930-31 (1969), *aff'd*, 59 CCPA 1, C.A.D. 1024, 449 F.2d 1398 (1971).

Commerce published in the Federal Register notice of its intent to terminate the suspended investigations in the Columbia and Thailand proceedings on February 26, 1990. 55 Fed. Reg. at 6,669. With respect to these proposed agency actions, the record is devoid of any evidence that Commerce provided prior written notification to counsel for the Plaintiffs, ATMI, or to any of the eight petitioning companies which Commerce had previously found to collectively constitute an interested party.

In the proposed revocations of the countervailing duty orders covering Argentina, Peru, and Sri Lanka, there is evidence that written notice was sent to Wilmer, which appeared on the interested party list, only in the Peru and Sri Lanka proceedings. A.R. Doc. 6. In the Argentinean and Peruvian revocation cases, ATMI was sent written notice describing ATMI as an interested party although Commerce had previously determined that ATMI was a non-interested party.

To summarize, there is evidence that Commerce endeavored to serve proper written notice in only two of the three revocation proceedings; no evidence supports Commerce's compliance with the regulations in either of the two termination proceedings.

Nevertheless, Defendant argues that there is evidence in the record that petitioners in fact received notice of all the proposed revocations and terminations if not by written notice in all cases then by some other means; each of Wilmer's five March 30, 1990 objection letters referenced a specific revoca-

tion or termination proceeding in this action by both invoice number and name.

While one might conclude that these opposition letters demonstrate that the petitioning companies, through their counsel Wilmer, somehow had notice of all Commerce's proposed actions, that fact does not relieve Commerce of its legal obligation to comply with its own regulations. *See Tex Mex Brick*, 63 Cust. Ct. at 221-22, 305 F. Supp. at 930-31. As the facts of this case demonstrate, Commerce's written notice, where given, tended to confuse and mislead, as when ATMI was mistakenly identified as an interested party on two occasions.

Accordingly, the Court finds that Commerce failed to provide proper written notice in accordance with specific provisions of 19 C.F.R. § 355.24(d)(4). Therefore, the Court holds that Commerce's revocations and terminations are not based upon substantial evidence on the record and are not in accordance with law.

Even if it could be successfully argued that Commerce provided proper notice of some of its proposed actions or that the petitioners had actual notice of all the proposed actions, the Court nevertheless finds that Commerce should have accepted the March 30, 1990 letters as proper and timely objections on behalf of the petitioning companies.

While it can be argued that the opposition letters were ambiguous as to who was objecting (ATMI alone or ATMI *and* the petitioning companies independently), the Court finds the letters adequately conveyed petitioners' intent, through their counsel Wilmer, to timely object to the proposed revocations and terminations. The Court reaches this conclusion after taking note of the potential prejudice that could have occurred to the petitioners on account of at least two of Commerce's notice letters, as well as the overall context in which the objections were made; it would seem that Commerce aided substantially in cultivating a field of confusion.

In the written notices concerning the Argentinean and Peruvian revocation proceedings, Commerce, apparently by mistake, identified ATMI itself as an interested party. However, after receiving Wilmer's March 30, 1990 objection letters "on behalf of ATMI and its members companies" objecting to the proposed revocations and terminations, Commerce refused to treat the letter as anything but an objection by ATMI alone. As such, Commerce treated the objection as insufficient, and warned that any attempt to name other interested parties would be rejected as untimely.

It is unjust to permit Commerce, which twice identified ATMI as an interested party with standing to object, to cry error after the objection from ATMI arrived. This Court holds the objections filed by Wilmer under the facts of this case were adequate objections on behalf of the eight interested petitioners. Furthermore Commerce should have accepted counsel's clarification of the objections pertaining to the eight petitioners; Wilmer attempted to explain by letters dated June 14, 1990, and July 13, 1990, but Commerce was not persuaded.

The record is clear that Commerce viewed the eight petitioning companies collectively as an interested party. The Court also gleans from the record that the eight petitioning companies are part of the ATMI membership. Nevertheless, Defendant argues that Wilmer's objection letters should have specifically identified those petitioning companies.

There are several possible reasons why Wilmer did not file the objections in that specific manner. The first possible reason is Commerce's errors in the Argentinean and Peruvian proceedings, discussed above. Another possible reason is that Wilmer might have viewed, quite reasonably, such specific identification of the eight petitioning companies as redundant because those companies were in fact among the "members" of ATMI and Commerce knew or should have known this. A third possible reason is that Wilmer may not have learned of some of the

proposed actions until the last minute; the objection letters were filed only one day prior to Commerce's published expiration date for filing objections. Considering the incomplete administrative record, it is difficult to discern what occurred and when. In all likelihood, Wilmer would have submitted objections in more precise detail had it anticipated Commerce's errors and omissions and narrow reading of the written objections.

The Defendant asks this Court on the one hand to strictly construe Commerce's regulations with respect to the form of objections to its proposed actions, and on the other hand to liberally construe the regulations governing the form of notice to be served upon interested parties. The Court refuses to apply Commerce's regulations is such an uneven manner.

In light of the muddled record, plagued by missing and misleading documents, the Court finds that Commerce should have read Wilmer's objections liberally and deemed them proper. Accordingly, the Court holds that Commerce's determinations to revoke and terminate the subject proceedings are not based upon substantial evidence on the record and are not in accordance with law.

Another factor that should be considered, although it was not discussed by either party, is that this action pertains to an already established countervailing duty proceeding. Unfair subsidies have already been found to exist. The countervailing duty orders and suspended investigations should not be terminated lightly without proper regard for the law.

This Court remands these proceedings to Commerce with the direction to rescind the revocation and termination orders in connection with which this action arises and for disposition of these matters consistent with this Court's ruling, and to report such action to this Court within 30 days from the date of entry of the judgment order in this action.

Plaintiffs' motion for judgment upon the agency record is granted.

/s/
Gregory W. Carman, Judge

Dated: March 24, 1992
New York, New York

Slip Op. 92-64

United States Court of International Trade

BELTON INDUSTRIES, INC., *et al.*,
Plaintiffs,

v.

UNITED STATES,
Defendant,

and

GOVERNMENT OF COLOMBIA,
ROYAL THAI GOVERNMENT,
Defendant-Intervenors

Consolidated
Court No. 90-09-00474

BEFORE: CARMAN, Judge

Judgment

Upon consideration of Plaintiffs' Motion for Judgment Upon the Agency Record, Defendant's and Defendant-Intervenors' opposition thereto, and upon consideration of all papers and proceedings herein, it is hereby

ORDERED that the Court's Order accompanying Slip Opinion 92-39, dated March 24, 1992, is vacated; and it is further

ORDERED that Plaintiffs' motion is granted; and it is further

ORDERED that the Department of Commerce shall rescind the following revocation and termination orders:

Certain Textile Mill Products from Argentina; Revocation of Countervailing Duty Order, 55 Fed. Reg. 32,940 (1990);

Certain Textile Mill Products and Apparel from Columbia; Termination of Suspended Countervailing Duty Investigations, 55 Fed. Reg. 32,940 (1990);

Certain Textile Mill Products and Apparel from Peru; Revocation of Countervailing Duty Orders, 55 Fed. Reg. 32,941 (1990);

Certain Textile Mill Products and Apparel from Sri Lanka; Revocation of Countervailing Duty Orders, 55 Fed. Reg. 32,942 (1990);

Certain Textile Mill Products from Thailand; Termination of Suspended Countervailing Investigation (in Part), 55 Fed. Reg. 48,885; and it is further

ORDERED that the Department of Commerce shall, concurrently, reinstate in full force the pre-existing countervailing duty orders and suspended investigations which were the subject of the revocation and termination orders; and it is further

ORDERED that, should the Department of Commerce subsequently propose revocation and termination of these pre-existing countervailing duty orders and suspended investigations which were the subject of the revocation and termination orders in the future, it will do so giving full recognition and effect to the Court's opinion, dated March 24, 1992.

/s/
Gregory W. Carman, Judge

Dated: May 7, 1992
New York, New York

Federal Register
Vol. 55, No. 226
Friday, November 23, 1990
Notices

(C-549-401)

Certain Textile Mill Products From Thailand; Termination of Suspended Countervailing Duty Investigation (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of suspended countervailing duty investigation in part.

SUMMARY: The Department of Commerce is terminating in part the suspended countervailing duty investigation on certain textile mill products from Thailand because certain products are no longer of interest to interested parties. The Department has determined to terminate the suspended countervailing duty investigation with respect to fabrics, special construction fabrics, textile furnishings, and miscellaneous textile mill products from Thailand. However, the Department will retain the suspended investigation with regard to yarn.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 6669) its intent to terminate the suspended countervailing duty investigation on certain textile mill products from Thailand (50 FR 9862; March 12, 1985). Interested parties who objected to the proposed termination were provided the opportunity to submit their comments on or before March 31, 1990. On March 28, 1990, the Department published a notice of opportunity to request an administrative review of the suspended investigation (55 FR 11417) for the period January 1, 1989 through December 31, 1989.

On March 26, 1990, the American Yarn Spinners Association (AYSA), a trade association, objected to our intent to terminate the suspended investigation and requested an administrative review. In addition, on March 30, 1990, the American Textile Manufacturers Institute, Inc. (ATMI), a trade association, objected to our intent to terminate the suspended investigation.

Since the Department had determined in the final determination of the initial investigation the ATMI lacked standing as an interested party, we sent a letter on May 29, 1990 requesting that ATMI provide information demonstrating its current status as an interested party under § 355.2(i) of the Commerce regulations. In addition, on June 7, 1990, the Department sent a letter to AYSA requesting information demonstrating its current status as in interested party. Section 355.2(i) of the Commerce regulations defines, in relevant part, an interested party as "(a) trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; * * *"

On June 14, 1990, ATMI provided the Department with a list of certain member companies that produce each of the like products covered by the suspended investigation, stating that in filing its March 30, 1990 letter of opposition to the proposed termination, it was acting on behalf of these individual producers. ATMI further argued that each of these companies is a manufacturer of like products and thus an interested party with the right to oppose the termination.

On June 15, 1990, AYSA provided the Department with a list of member companies and a list of those member companies that produce each of the yarn products covered by the suspended investigation. Further, AYSA withdrew its objection to termination and request for an administrative review with respect to all non-yarn products, stating that its interest is only with respect to yarn. On June 25, 1990, AYSA resubmitted a list of its member companies and requested that the Department treat its June 15, 1990 submission as business proprietary pursuant to 355.32 of the Commerce regulations. In a letter of July 17, 1990, the Department rejected AYSA's request because it did not explain fully why its submission should be given proprietary treatment. In addition, AYSA failed to serve copies of the submission on all interested parties. The Department allotted AYSA additional time to resubmit the information. On July 26, 1990, AYSA withdrew its request for proprietary treatment and resubmitted the list of member companies contained in its June 15, 1990 submission that demonstrated that a majority of those member companies produce each of the yarn products covered by the suspended investigation.

Determination to Terminate in Part

Section 355.25(d)(4) of the Department's regulations set out two conditions that must be met to maintain a suspension agreement:

1. The objecting party must be an interested party as defined in section 355.2(i); and

2. The interested party must object within thirty days of the Department's notice of intent to terminate.

The regulations provide that any interested party may object to the Department's notice of intent to terminate by submitting a letter to the Department stating they request the suspension agreement to be maintained.

ATMI failed to meet the first requirement under § 355.25(d)(4). In its March 30, 1990 letter, ATMI objected to termination on behalf of itself and its members without establishing its standing as an interested party in the proceedings. In its June 14, 1990 response to our May 29, 1990 letter, ATMI did not provide information demonstrating that the majority of its members were producers or sellers of each of the like products covered by the suspended investigation, information that the Department had specifically requested. Therefore, we determine that ATMI, as a trade association, is not an interested party in these preceedings in accordance with § 355.2(i)(5) of the Commerce regulations and lacks standing to object to the Department's intent to terminate.

ATMI claimed in its June 14, 1990 letter that its March 30, 1990 letter objecting to termination was filed on behalf of the individual procedures provided on the list accompanying the June 14 letter However, because such procedures were not specifically identified as objecting interested parties in the March 30 letter, the Department determines that ATMI objected to the termination only as a trade association. ATMI's June 14, 1990 substitution of individual procedures of the like products as interested parties objecting to the termination was untimely pursuant to § 355.25(d)(4) of the Commerce regulations.

It is clear from the regulations that only interested parties may object to the termination of a suspended investigation.

ATMI was on notice that the Department did not consider it an interested party during the initial investigation. The only way the domestic industry was able to satisfy the Department's standing requirements during the course of the investigation was by amending the petition to add eight individual producer firms as interested parties. Thus, ATMI's March 30, 1990 letter, should have clearly identified the individual firms that objected to the termination of the suspended investigation.

In AYSA's letter of June 15, 1990, AYSA formally acknowledged its lack of standing with respect to non-yarn products. The Department therefore determines that AYSA, as a trade association, lacks standing to object to the Department's intent to terminate with respect to non-yarn products (fabrics, special construction fabrics, textile furnishings, and miscellaneous textile mill products). However, the Department determines that AYSA is an interested party in these proceedings in accordance with § 355.2(i)(5) of the Commerce regulations and therefore does have standing to object to the Department's intent to terminate with respect to yarn products, a separate like product from non-yarn. In accordance with § 355.25(d)(4) of the Commerce regulations, the Department is terminating in part the countervailing duty suspension agreement with respect to all non-yarn products from Thailand.

We received no other objections to our intent to terminate the suspended countervailing duty investigation on certain textile mill products from Thailand. We have not received a request to conduct an administrative review for non-yarn products for the past five consecutive annual anniversary months. However, we did receive a request to conduct an administrative review for yarn products.

According to 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and terminate the suspended investigation if no interested party objects to termination

or requests an administrative review by the last day of the fifth anniversary month. Because no interested party has objected to termination or requested a review within the deadlines, the Department is terminating the suspended investigation with respect to all non-yarn products covered by the suspension agreement on certain textile mill products from Thailand. The effective date of termination is January 1, 1990.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Dated: November 15, 1990

Marjorie Chorlins,
Acting Assistant Secretary for Import Administration.

[F.R. Doc. 90-27569 Filed 11-21-90; 8:45 am]

Billing Code 3510-DS-M

United States Court of Appeals for the Federal Circuit

92-1419, -1451

BELTON INDUSTRIES, INC; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC.; SHUFORD MILLS, INC.; DELTA-WOODSIDE MILLS, INC.; WEST POINT-PEPPERELL, INC.; BIBB MANUFACTURING COMPANY and JPS TEXTILES as successors in interest to J.P. STEVENS & CO., INC.; WEST POINT-PEPPERELL, INC. and THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC. for itself and on behalf of BELTON INDUSTRIES, INC.; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC. and SHUFORD MILLS, INC.,

Plaintiffs-Appellees,

v.

THE UNITED STATES,

Defendant-Appellee,

GOVERNMENT OF COLUMBIA,

Defendant-Appellant,

and

ROYAL THAI GOVERNMENT,

Defendant-Appellant.

United States Court of Appeals for the Federal Circuit

92-1452, -1483

BELTON INDUSTRIES, INC; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC.; SHUFORD MILLS, INC.; DELTA-WOODSIDE MILLS, INC.; WEST POINT-PEPPERELL, INC.; BIBB MANUFACTURING COMPANY and JPS TEXTILES as successors in interest to J.P. STEVENS & CO., INC.; WEST POINT-PEPPERELL, INC. and THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC. for itself and on behalf of BELTON INDUSTRIES, INC.; BURLINGTON INDUSTRIES, INC.; CHATHAM MANUFACTURING COMPANY; MILLIKEN & COMPANY; MOUNT VERNON MILLS, INC. and SHUFORD MILLS, INC.;
Plaintiffs-Appellees,

v.

THE UNITED STATES,
Defendant-Appellee,

GOVERNMENT OF COLOMBIA,
Defendant,

and

ROYAL THAI GOVERNMENT,
Defendant-Appellee,

v.

GOVERNMENT OF SRI LANKA,
Appellant,

and

GOVERNMENT OF PERU,
Appellant.

ORDER

Before ARCHER, Circuit Judge, BENNETT, Senior Circuit Judge, and RADER, Circuit Judge.

A petition for rehearing having been filed by the APPELLANT,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate will issue October 12, 1993.

FOR THE COURT,
FRANCIS X. GINDHART,
CLERK

Dated: October 4, 1993

by/s/
Diane M. Frye
Chief Deputy Clerk

cc: GREGORY J. SPAK, GARY M. WELSH
JOHN D. GREENWALD, DANIEL L. PORTER

BELTON IND INC V US, 92-1452
(CIT - 90-09-00474)

Note: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public record.

TEXT OF 19 C.F.R. § 355.25(d)(4) (1990)

§ 355.25 Revocation of orders; termination of suspended investigations.

* * * *

(d) Revocation of termination based on changed circumstances.

* * * *

(4) (i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the FEDERAL REGISTER notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(4)(i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.

(iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(a) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the

FEDERAL REGISTER the notice described in paragraph (d)(3)(vii) of this section.